IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 3688 of 2002(L)

PETITIONER:

C.V.MOHAN KUMAR, DEPUTY REGISTRAR,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:
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1. **UNIVERSITY OF KERALA, REPRESENTED BY ITS REGISTRAR, UNIVERSITY BUILDINGS, THIRUVANANTHAPURAM.**

2. **THE VICE CHANCELLOR, UNIVERSITY OF KERALA, UNIVERSITY BUILDINGS, THIRUVANANTHAPURAM.**

3. **VIDHULA, JOINT REGISTRAR, UNIVERSITY OF KERALA, UNIVERSITY BUILDINGS, THIRUVANANTHAPURAM.**

4. **N.HARIKRISHNAN NAMBOOTHIRI, JOINT REGISTRAR, UNIVERSITY OF KERALA, UNIVERSITY BUILDINGS, THIRUVANANTHAPURAM.**

BY ADV. SRI.M.RAJAGOPALAN NAIR, SC, KERALA UTY.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.3688/2002

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER NO. AD.AI.1.10478/2000 DT.27.9.01 OF THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE ORDER NO.AD.AI.1.101/2001 DT. 28.9.01 OF THE IST RESPONDENT.

EXT.P3:- COPY OF THE ORDER NO.AD.A1.1.116/2001 DT. 20.12.2001 OF THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE ORDER NO.AD.1.101/2001 DT. 1.1.02 OF THE IST RESPONDENT.

EXT.P5:- COPY OF THE ORDER NO.AD.AI.17140/99 DT.12.7.2000 OF THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE ORDER NO.AD.AI.101/01 DT. 26.9.01 OF THE IST RESPONDENT.

EXT.R1(a):- COPY OF THE SHOW CAUSE NOTICE NO.AD.AI.1.10478/2000 ISSUED TO THE PETITIONER BY THE JOINT REGISTRAR (ADMN.I) DT. 12.12.2000.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.3688 of 2002-L

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Dated this the 4th day of September, 2007.

JUDGMENT

"CR"

1. The petitioner challenges the decision contained in Ext.P1 by which he has been informed that the Selection Board, at its meeting held on 27-9-2001, assessed his suitability for the post of Joint Registrar and had recommended that he has been found to be not suitable for such promotion.

2. The petitioner's case is that he had been subjected to hostile discrimination in as much as he has been denied promotion in spite of being called before the Selection Board on three occasions and that the Selection Board was not one constituted in terms of the relevant provision, which is Statute 8 in Chapter 4 of the Kerala University

First Statutes, 1977, hereinafter referred to as the "Statutes". His further case is that the University adopts a policy of mere pick and choose with no reference to the service records and without appropriately assessing the competence. The learned counsel for the petitioner, in support of the writ petition, made copious reference to the materials on record, including an order by which yet another employee was imposed with punishment, to state that even that employee was promoted.

3. The University asserts in its counter affidavit that the petitioner was subjected to the process of selection by the Selection Board and was found to be not suitable for being promoted as Joint Registrar. Refuting the different allegations levelled against the University, a memo, Ext.R1(a), issued to the petitioner is also relied on to point out that his conduct is itself a matter of record. As regards the contention of the petitioner that appropriate Selection Board was not constituted, the plea of the

University is that the selection was made by a Selection Board in terms of the provision referred to above and that there is no provision in the Statutes which prescribes the minimum quorum for the meeting of the Selection Board and that therefore as a matter of practice, the Vice-Chancellor and at least one Syndicate Member with the assistance of the University officials take the decision regarding assessment of officers suitable for promotion.

4. Statute 8 in Chapter 4 of the Statutes provides a particular constitution for the Selection Board. The Vice-Chancellor is its Chairman. The Convener of the Standing Committee of the Syndicate on staff, equipment and buildings, the Convener of the Standing Committee of the Syndicate on finance and two Syndicate Members to be nominated by the Vice-Chancellor from time to time are to be its members, while the Registrar shall be the Secretary of the Board. The Board may conduct such tests as may be necessary to determine the suitability of the candidates

for appointment. That provision obliges the University to observe the rules of reservation contained in the Kerala State and Subordinate Services Rules as amended from time to time while making direct recruitment. Statute 8 does not prescribe a quorum for the Selection Board for transaction of its business. When the enabling provision prescribes a quorum, the meeting of the Committee could be transacted only with that minimum and it can be transacted with that minimum number of members being available, without the entire Committee being available. The provision of fixing a quorum is essentially to ensure that meeting goes through even in the absence of some of the members, provided the minimum requisite, as prescribed as the quorum, is available. But in a situation where no quorum is prescribed by the enabling provision, it is not the law that the Committee can decide without sitting in terms of the provision of law. In the absence of a prescription as to quorum being made by the relevant laws, the Committee can function only if all its members

are available and sitting. So much so, in the absence of any other enabling provision, a Selection Board in terms of Statute 8 in Chapter 4 of the Statutes can function only if the Vice-Chancellor and the members of the Selection Board, as are prescribed by Statute 8, sit together for the decision-making process. This approach may invite certain practical difficulties as are easily discernible. So long as prescription of law continues to be what is stated above, inconvenience may be no excuse to prevent the effect of the provisions. Viewed in this angle, the learned counsel for the petitioner is justified in contending that it is not open to the University to take the stand that no quorum is prescribed by the Statutes and therefore, the Vice-Chancellor and one of the Syndicate members could decide the matters which have to be considered and decided by the Selection Board in terms of Statute 8.

5. Once the Selection Board takes a decision in terms of Statute 8, the appointing authority as far as the post of

Joint Registrar is concerned, is the Syndicate. The appointment orders of the selected persons, as issued by the Vice-Chancellor, going by its last paragraph are also required to be placed before the Syndicate for its ratification. Obviously, therefore, notwithstanding the decision of the Selection Board and any formal order of appointment issued by the Vice-Chancellor, it is the Syndicate which has to take a final decision in the matter. I may profitably refer to the decision of this Court in **Kerala University v. Sunny**, 1996 (2) KLT 565 and **Tresa V.Fernandez v. University of Kerala**, 1997(1) KLJ 102, which, in effect, have laid down the law that the recommendations of the Selection Committee have to be given due weight, though not binding on the Syndicate and that if the Syndicate proposes to take a different view on the recommendation of the Selection Committee, the Syndicate shall record its reasons. The Court can interfere with the decision of the Selection Committee only on limited grounds.

6. With the aforesaid in mind, it can be easily noticed that even if the Selection Board has made a recommendation, without it being duly constituted in terms of Statute 8, the Syndicate may not be wholly unjustified in making an appointment in a particular case though, as a matter of rule, it has to be ensured that such a situation would always be an exception, while the recommendation of a duly constituted Selection Board in terms of Statute 8 is the requirement of law and it is on the basis of that recommendation that the Syndicate has to take a decision, subject to its power to disagree with the recommendations of the Selection Board.

7. In so far as the case in hand is concerned, petitioner has since demitted office on superannuation and has admittedly not discharged the duties and responsibilities attached to the office of the Joint Registrar. Admittedly, the post of Joint Registrar is a selection post. So much so,

the promotion is not an automatic feature. The Syndicate which is the supreme authority in so far as the appointments are concerned, concluded against the petitioner on the basis of the so-called recommendation of the Selection Board. Under such circumstances, I do not deem it necessary to exercise the writ jurisdiction to disturb the status obtained, by now, as regards the recommendation made against the interest of the petitioner, as reflected in Ext.P1, though I am satisfied that such recommendation is by an incompetent and ill-constituted Selection Board.

8. Having regard to the totality of the facts and circumstances, ends of justice would be satisfied, if the claim of the petitioner for promotion as Joint Registrar with effect from the year in relation to which Ext.P1 has been issued is considered by the Syndicate on a proper request made by him and an appropriate decision taken as to whether he could be notionally given such a benefit so

that he would, at least, gather better retiral benefits. I am inclined to relegate the petitioner to the Syndicate for this purpose because the Selection Board in terms of Statute 8 in Chapter 4 of the Statutes is one subordinate to the authority of the Syndicate and therefore, the Syndicate could be apprised by the petitioner that the Selection Board was ill-constituted as held herein and had acted against his interest, as contended by him.

In the result, this writ petition is disposed of directing that if the petitioner makes appropriate request to the Syndicate for consideration of his case and claim for the post of Joint Registrar notionally with effect from the period to which Ext.P1 relates, the same shall be considered by the Syndicate and the Registrar of the University shall be duty bound in terms of this judgment to ensure that such request of the petitioner is placed before the Syndicate and a decision obtained within an outer limit of six months from the date of receipt of a copy

of this judgment. If the Syndicate decides in favour of the petitioner, to give a notional placement as Joint Registrar, he would not be entitled to any arrears of any emoluments, but his case for revision of retiral benefits in terms of such decision shall also be taken and any arrear due in that regard shall be disbursed without delay. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 4th September, 2007.